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THE TTAB**

Mailed: August 28, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Millersport, Inc.

Serial No. 76590093

Myron Amer, Esq. for Millersport, Inc.

Katherine Stoides, Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney).

Before Quinn, Hohein and Walters, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Millersport, Inc. has filed an application to register
on the Principal Register in standard character form the
mark GOLDEN GLOVE for "baseball gloves for Little League
baseball players," in International Class 28.¹

The examining attorney has issued a final refusal to
register under Section 2(d) of the Trademark Act, 15 U.S.C.
§1052(d), on the ground that applicant's proposed mark is

¹ Serial No. 76590093, filed April 30, 2004, based on an allegation of a
bona fide intention to use the mark in commerce.

likely to cause confusion with the mark GOLD GLOVE, registered for "baseball gloves and mitts," in International Class 28.² The registration includes a disclaimer of GLOVE.

The final refusal is also based on a requirement, under Section 6 of the Trademark Act, 15 U.S.C. §1056, to disclaim GLOVE apart from the mark as a whole on the ground that the term is merely descriptive in connection with the identified goods.

Applicant has appealed and filed a main brief and reply brief, but did not request an oral hearing. The examining attorney has also filed a brief.

Disclaimer

The examining attorney contends that the GLOVE portion of applicant's mark is merely descriptive in connection with the identified goods; that the mark is not unitary such that it creates a commercial impression separate and apart from any unregistrable components; and, thus, that the term should be disclaimed apart from the mark as a whole.

Applicant contends that no disclaimer is required because the mark GOLDEN GLOVE is "a unitary two-word sequence of an adjective (GOLDEN) and noun (GLOVE)" (brief, p. 3), and because "[a]pplicant's mark of 'glove' in the singular is an 'incongruity' for goods consisting of

² Registration No. 1291345, issued on August 21, 1984, to Rawlings Sporting Goods Company, Inc. (renewed; Section 15 declaration acknowledged).

'gloves' in the plural," citing TMEP §1213.05 entitled "'Unitary' Marks" (response of November 9, 2005, p. 2).

There is no question that GLOVE is merely descriptive in connection with applicant's identified goods as it is the name of the goods. The fact that the goods are a particular type of glove, *i.e.*, baseball gloves, does not render the individual term GLOVE in the mark non-descriptive. Thus, the remaining question before us is whether GOLDEN GLOVE is a unitary mark that is exempt from disclaimer of any component. In the case of *Dena Corp. v. Belvedere Int'l., Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991) (EUROPEAN FORMULA above a circular design on a dark square or background considered not unitary), the court declared that a unitary mark must create a single and distinct commercial impression and concluded that the elements of the subject mark were not so merged together that they could not be regarded as separate. In the case before us, there is no design element, so we consider the two words themselves and determine whether, in combination, they have any quality of sound, appearance or connotation that would render the mark unitary, *i.e.*, whether the elements are so merged together that they can not be considered separable or whether the mark as a whole is a double entendre or whether the connotation creates an incongruity so that the

whole mark can be considered greater than the sum of its parts. The mere fact that GOLDEN is an adjective modifying GLOVE in the mark does not render the mark as a whole unitary such that the elements are so merged together that they can not be considered separable. Similarly, applicant's argument that it sells multiple gloves whereas the mark includes the term GLOVE in the singular is not an incongruity that rises to the level of creating a unitary mark. We do not find anything about this mark that would lead us to conclude that it is a unitary mark.

Thus, in view of the merely descriptive nature of the term GLOVE in the mark GOLDEN GLOVE, we affirm the examining attorney's requirement for a disclaimer of the term GLOVE apart from the mark as a whole.

Likelihood of Confusion

In arguing that a likelihood of confusion exists, the examining attorney makes the following statement about the marks (brief, p. 3):

The applicant's mark GOLDEN GLOVE is highly similar to the registrant's GOLD GLOVE in sight, sound and commercial impression. Both marks consist of the unique combination of terms - GLOVE coupled with a variation of GOLD. The terms GOLD and GOLDEN have essentially the same meaning. GOLDEN is define [in *The American Heritage Dictionary of the English Language* (3rd ed. 1992)] as "of, relating to, made of, or containing gold." Therefore the marks GOLD GLOVE and GOLDEN GLOVE communicate the same meaning and connotation - "a glove of gold."

Regarding the marks, the examining attorney contends that both the registration and the application include identical "baseball gloves"; and that, while applicant's identification of goods limits its baseball gloves to those for Little League players, registrant's goods are not so limited and its identification of goods would encompass applicant's Little League baseball gloves. Regarding the channels of trade, the examining attorney notes that neither identification of goods is limited and, thus, the trade channels and classes of purchasers are the same.

Applicant noted that the Section 2(d) refusal originally included citation of two other registrations owned by the same registrant for GOLD GLOVE AWARD (Registration No. 990449) and RAWLINS GOLD GLOVE AWARD (Registration No. 1945544), both registered for entertainment services and containing a disclaimer of AWARD. Applicant contends that the withdrawal of the refusal with respect to these two registrations is tantamount to an admission that there is no likelihood of confusion with respect to the remaining cited registration. Applicant argues that the goods are quite different because registrant's gloves are sold to adults and its gloves are sold only to children for Little League play; and that the marks are different because there is a significant

difference in sound, meaning and appearance between GOLDEN and GOLD.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entirety, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average

purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In our case, both marks consist of a form of the word GOLD followed by the word GLOVE. The examining attorney has provided sufficient evidence via a dictionary definition that GOLDEN is simply another form of the word GOLD and that it has essentially the same meaning. The words GOLDEN and GOLD, and, thus, the marks as a whole, differ only by two letters, the "EN" at the end of GOLDEN in applicant's mark. Therefore, we conclude that the sound, appearance, connotation and overall commercial impressions of the marks GOLDEN GLOVE and GOLD GLOVE are substantially similar.

Turning to consider the goods or services involved in this case, of particular relevance herein is the well settled principle that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d

1715 (TTAB 1991). Herein, both applicant's and registrant's identifications of goods contain "baseball gloves." Whether registrant actually sells only adult baseball gloves is irrelevant in view of the lack of any such limitation in its identification of goods, which are broadly identified and would encompass applicant's baseball gloves for Little League players. Additionally we take judicial notice of the relevant definition in *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) of "mitt" as "a baseball catcher's or first baseman's glove made in the style of a mitten." Clearly, baseball gloves and mitts are related items. Thus, the goods are identical and/or closely related to the goods in the cited registration.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, GOLDEN GLOVE, and registrant's mark, GOLD GLOVE, their contemporaneous use on the identical goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The requirement under Section 6 of the Act for a disclaimer of GLOVE is affirmed. The refusal under Section 2(d) of the Act is also affirmed.